

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION**

)	COMPLAINT NO. R4-2004-0068
In the matter of:)	ADMINISTRATIVE CIVIL LIABILITY
)	For
CEMEX CONSTRUCTION MATERIAALS L.P.)	VIOLATIONS OF THE CALIFORNIA WATER CODE
)	(NPDES PERMIT NO. CAS000001)

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Cemex Construction Materials L.P. (Permittee) is alleged to have violated requirements contained in State Water Resources Control Board Order No. 97-03-DWQ[NPDES Permit No. CAS000001] for which the California Regional Water Quality Control Board, Los Angeles Region (hereinafter the Regional Board), may impose ability under section 13385 of the California Water Code (CWC).
2. A hearing shall be conducted on this Complaint by the Regional Board or Regional Board Hearing Panel (Hearing Panel) within ninety days after service of this Complaint on the Permittee, unless the Permittee waives the hearing and pays the recommended penalty of \$86,500. The Permittee and/or Permittee's representatives will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. A notice containing the date, time and location of the Hearing will be mailed to the Permittee not less than ten days prior to the Hearing date.
3. At the hearing, the Regional Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of greater judicial civil liability.
4. In the event the Permittee fails to comply with requirements of this Compliant, the Executive Officer is authorized to refer the matter to the Office of the Attorney General for enforcement.
5. Storm water runoff and authorized non-storm water discharges from the Permittee's facility at 505 Railroad Place in the City of Inglewood are regulated under the State's General Permit for Storm Water Runoff Associated with Industrial Activities, Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit), WDID No. 4 19S 001542.
6. The Permittee is alleged to have violated the General Permit, Discharge Provision A.1 (" . . . materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited"). As more fully set forth below, the Permittee allowed non-storm water discharges to leave its facility which caused or threatened to cause pollution, contamination, or nuisance in navigable waters of the United States. The

Permittee failed to adequately implement appropriate Best Management Practices (BMPs) for the elimination or reduction of pollutants. The Permittee discharged pollutants to waters of the United States from the facility. Appropriate reporting of the discharge was not performed. Pursuant to CWC section 13385(a)(1), (2), (4) and (5), civil liability may be imposed for these described violations.

THE FOLLOWING FACTS ARE THE BASIS FOR THE ALLEGED VIOLATIONS IN THIS MATTER:

BACKGROUND

7. The Permittee operates a ready-mixed concrete facility. The Permittee is subject to the requirements of the General Permit.
8. The Permittee's Notice of Intent, filed on January 9, 2003, listed "ready-mixed concrete" as the facility's regulated activity and "3273" as the Standard Industrial Classification (SIC) code.
9. Under the General Permit, the Permittee is allowed to discharge storm water runoff associated with industrial activities into the Centinela Creek Channel, a navigable water of the United States.
10. On December 18, 2003, Mr. Steve Hruby from Tetra Tech, Inc. (TTI) conducted an inspection of the Permittee's facility to determine compliance with the General Permit, under the direction of the Regional Board in accordance with a contract with the United States Environmental Protection Agency (USEPA). As documented in an inspection report dated December 18, 2003, the inspectors observed the Permittee was in violation of several provisions of the General Permit. The Permittee had not implemented appropriate BMPs for managing non-stormwater as evidenced by a constant discharge of process water to the onsite storm drain.
11. On January 23, 2004, the Regional Board issued a Notice of Violation (NOV) to the Permittee for failure to implement effective BMPs to manage non-stormwater runoff. In the NOV, staff warned the Permittee of the penalties for violations of the General Permit. The NOV also required that revisions to the SWPPP be submitted to the Regional Board by February 23, 2004. The Regional Board did receive a response and a revised SWPPP on February 23, 2004, pointing out more maintenance and plans of new structural BMPs to address the non-stormwater runoff.
12. On March 10, 2004, Regional Board inspector Mr. Enrique Loera inspected the Permittee's facility to determine compliance with the NOV. As documented in an inspection report dated March 11, 2004, the inspector observed process water being discharged from the site into a drain leading to the County storm drain which empties into Centinela Creek Channel. This discharge violated the prohibition on unauthorized non-stormwater discharges of the General Permit (Part A.1), and did not comply with the NOV. Inadequate house keeping was observed, as evidenced by dust, sediment and fly ash on the floor throughout the facility. Also aggregate piles were not contained allowing for sediment and other materials to be picked up during a storm event.

13. On March 11, 2004, Regional Board inspectors Mr. Enrique Loera and Mr. Ivar Ridgeway inspected the Permittee's facility to take samples of the unauthorized discharge. As documented in the inspection report dated March 19, 2004, the inspectors observed process water being discharged from the site into a drain leading to the County storm drain which empties into Centinela Creek Channel. Samples were taken and lab results show that the water was above EPA bench marks for pH (12.10 pH standard units or s.u.), conductivity, total suspended solids and iron.
14. On March 25, 2004, the Regional Board issued an NOV to the Permittee for failure to implement effective BMPs to manage non-stormwater runoff and other violations. In the NOV, staff warned the Permittee of the penalties for violations of the General Permit. The Regional Board received a response on March 31, 2004, and it was determined to be adequate, stating that the drain would be sealed off so no water would enter the drain and addressing the other violations pointed out on the NOV.
15. The Regional Board adopted a revised *Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties (Basin Plan)* on June 13, 1994. *The Basin Plan* designates beneficial uses of waters and establishes water quality objectives needed to protect those beneficial uses. For the Centinela Creek channel (tributary of Ballona Creek), the Regional Board designated the following beneficial uses: non-contact water recreation and wildlife habitat.
16. The Basin Plan specifies that the pH of receiving waters should not be "depressed below 6.5 or raised above 8.5 as a result of waste discharges". Laboratory results of the discharge of process water sampled on March 11, 2004 gave a reading of 12.10 s.u. Any discharge with a pH of more than 9 s.u. would violate water quality objectives and constitute a threat to beneficial uses.
17. Section 13385 of the California Water Code (CWC) provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385 (c) provides that civil liability may be administratively imposed by a Regional Board in an amount not to exceed ten thousand dollars (\$10,000) per violation for each day the violation occurs.
18. The Permittee is alleged to have violated the waste discharge requirements of the General Permit by discharging caustic process water since at least January 9, 2003 (date NOI was signed) until March 19, 2004 (date the drain was sealed off). Therefore, the maximum liability under section 13385(a)(2) of the CWC is:

$$436 \text{ day} \times \$10,000 \text{ per day} = \$4,360,000$$

MAXIMUM CIVIL LIABILITY

Penalty Category	Calculation	Total
<i>For discharging process water in violation of General Permit Order No. 97-03-DWQ</i>	CWC section 13385(a)(2) (January 9, 2003-March 19, 2004) 436 days X \$10,000/day	\$4,360,000
POTENTIAL MAXIMUM ACL		\$4,360,000

19. Pursuant to section 13385(e) of the CWC, the Regional Board is required to consider the following factors in determining the amount of civil liability to be imposed:

- a) Nature, circumstances, extent, and gravity of the violations: Despite prior warnings, the Permittee discharged on at least 3 days caustic process water to an onsite storm drain. The pH of the discharge was measured at more than 9, which may have caused significant impairment of beneficial uses. Therefore a reduction in the assessment of the civil liability is not warranted.
- b) Susceptibility to cleanup or abatement of the discharge: The discharge flowed into an onsite storm drain at 50-60 gallons per minute. Cleanup would require this discharge to be contained and disposed of into a wastewater treatment or hazardous waste facility. The Permittee did not undertake such a cleanup. Future discharges could be prevented by the implementation of appropriate BMPs. Therefore a reduction in the assessment of the civil liability is not warranted.
- c) Degree of toxicity of the discharge: The pH of the discharge was measured at more than 9, which is toxic to aquatic life, and could cause severe irritation upon contact with skin. Therefore a reduction in the assessment of the civil liability is not warranted.
- d) The ability of the Permittee to pay: The Permittee has not provided any information to indicate that it is unable to pay the proposed amount. The Permittee is a large corporation with branch offices and manufacturing plants in several states. Therefore a reduction in the assessment of the civil liability is not warranted.
- e) The effect on its ability to continue its business: The Permittee has not provided any information to indicate the payment of the penalty will jeopardize the Permittee's ability to continue operations.
- f) Any voluntary cleanup efforts undertaken: The Permittee took appropriate action to stop the discharge only after the inspectors witnessed the discharge on three separate occasions. Therefore a reduction in the assessment of the civil liability is not warranted.
- g) Prior history of violations: The Permittee repeatedly violated the General Permit (Part A, discharge prohibitions) as described in findings 9 through 12 above. The NOV issued on January 23, 2004 described violations of the General Permit including failure to implement appropriate BMPs and the unauthorized discharge of process water. The unauthorized discharge of process water continued after the NOV and was noticed during two follow up

inspections. Discussions with Permittee employees (as documented on the March 10, 2004 inspection report) reveal the fact that this unauthorized discharge was common practice and had been occurring for many years. Therefore a reduction in the assessment of the civil liability is not warranted.

- h) Degree of culpability: The Permittee violated the terms of the General Permit by failing to implement appropriate BMPs and by discharging unauthorized non-storm water containing pollutants. In addition, the Permittee should have been aware of its potential threat to water quality and the need for effective BMPs for several years. Therefore a reduction in the assessment of the civil liability is not warranted:
- i) Economic benefit or savings: The Permittee realized cost savings by not taking appropriate measures to prevent the discharge of process water over an extended period of time. The Permittee could have avoided these violations by promptly implementing appropriate structural BMPs to prevent and contain discharge of process water. The avoided cost of connecting to the Sanitation District of Los Angeles County is estimated to be \$104,996.24 according to representatives from the Sanitation District of Los Angeles County. Therefore a reduction in the assessment of the civil liability is not warranted.
- j) Other matters as justice may require: An additional matter to consider includes time spent by the staff of the Regional Board in evaluating the incidents of violation and preparing this Order and related documents. The Regional Board charges a rate of \$70 per hour for staff cost recovery. With total staff time of 60 hours, staff costs incurred by the Regional Board is estimated to total \$4,200.

RECOMMENDED CIVIL LIABILITY

20. After consideration of these factors, the Executive Officer proposes civil liability be imposed on Cemex Construction Materials L.P. in the amount of \$86,500 which consists of the following:

- An assessment of \$30,000 for at least 3 days of process water unauthorized discharge in violation of CWC section 13385(a)(2).
- An assessment of \$52,300 (less than 50% of Sanitation District estimate) for the avoided cost of not installing and maintaining water re-using structural BMPs or connecting to the Los Angeles County Sanitation District to avoid illicit discharges.
- An assessment of \$4,200 for staff cost recovery (60 hours at \$70 per hour).

RECOMMENDED CIVIL LIABILITY

Penalty Category	Calculation	Total
<i>a) Avoided cost</i>	Cost to prevent constant discharge since Permittee was in operation.	\$52,300
<i>b) For failing to comply with Order No. 97-03-DWQ for 3 days by discharging unauthorized caustic process water.</i>	CWC section 13385(a)(2) at least 3 days X \$10,000/day	\$30,000
<i>c) Staff cost</i>	60 hours at \$70 per hour	\$4,200
TOTAL RECOMMENDED PENALTY		\$86,500

21. This matter will be heard before the Regional Board or Hearing Panel pursuant to Water Code section 13323 unless the Permittee waives the hearing and pays the penalty of \$86,500 in full by August 5, 2004. The Permittee will be notified of the date, time, and location of the Hearing.
22. Notwithstanding the issuance of this Complaint, the Regional Board shall retain the authority to assess additional penalties for violations of the requirements of the General Permit for Storm Water Discharges Associated with Industrial Activities, including but not limited to implementation of a SWPPP.
23. The Permittee may waive the right to a hearing. Should the Permittee decide to waive the right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return the executed waiver form to the Regional Board (320 West 4th Street, Suite 200, Los Angeles, CA 90013) by the close of business on August 5, 2004. If the hearing is waived, the civil liability may be satisfied by performing one of the following alternatives:
- a. A check in the amount of \$86,500 (payable to the State Water Resources Control Board Cleanup and Abatement Account) shall accompany the signed waiver, or
 - b. The Permittee may propose to pay up to \$64,875 of the civil liability by:
 - i contributing to a supplemental environmental project (SEP) on the Regional Board approved SEP List
www.swrcb.ca.gov/rwqcb4/html/programs/enforcement.html, or
 - ii carrying out the Permittee's own SEP.

In the event that the Permittee proposes to invest in a SEP, a check in the amount of \$21,625 (payable to the State Water Resources Control Board Cleanup and Abatement Account) together with the Permittee's written statement electing whether to contribute to a SEP on the SEP List or to carry out an independent SEP

will be submitted along with the executed waiver and received by the Regional Board by the close of business on August 5, 2004.

If the Permittee elects to contribute to a SEP on the SEP List, the Permittee shall pay \$64,875 to the chosen SEP by the close of business on August 5, 2004. The Permittee shall also notify the Regional Board of the date, amount and method of payment by the close of business on August 5, 2004.

If the Permittee proposes to carry out an independent SEP, a detailed proposal shall be received by the Regional Board by the close of business on August 5, 2004. A proposal for an independent SEP will be subject to public notice and approval of the Regional Board. Should the Regional Board not approve the Permittee's proposal for a SEP, or should the Permittee later fail or elect not to implement the proposed SEP, the remainder of the total Administrative Civil Liability will be due and payable within 30 days of such an event.

24. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code section 21000 et seq., in accordance with California Code of Regulations, title 14, section 15321.
25. Regulations of the US Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.

Jonathan Bishop, P.E.
Interim Executive Officer

July 2, 2004

WAIVER OF THE RIGHT TO A HEARING

By signing below and returning this Waiver, I hereby waive the right of Cemex Construction Materials, L.P. to a hearing before the Regional Board to dispute the allegations and civil liability set forth in Administrative Civil Liability Complaint No. R4-2004-0068 (Complaint) issued by the Regional Board Executive Officer. Cemex Construction Materials L.P., understands that this Waiver gives up the rights to contest the allegations of the Complaint and the amount of civil liability it imposes.

Cemex Construction L.P., elects to pay the civil liability in the following manner [check the relevant boxes]:

- o Enclosed herewith in full payment of the civil liability is a \$86,500 check payable to ‘State Water Resources Control Board Cleanup and Abatement Account.’
- Or
- o Enclosed herewith are a \$21,625 check payable to ‘State Water Resources Control Board Cleanup and Abatement Account’ and one of the following items:
- o Proof of payment of at least \$ 64,825 to a Supplemental Environmental Project (SEP) listed on the Regional Board-approved SEP list, or
- o A detailed description of an independent SEP estimated to cost at least \$ 64,825 which is acknowledged to be subject to a noticed Regional Board hearing and approval.

Cemex Construction Materials L.P., understands that this Waiver gives up the rights to argue against the allegations made by the Executive Officer in this Complaint and against imposition of, and the amount of, civil liability imposed. Cemex Construction Materials L.P., also understands that if an Administrative Civil Liability Order is adopted by the Regional Board, payment in full will be due thirty days after the date of the adoption of the Order.

I hereby affirm that I am duly authorized to act on behalf of and to bind Cemex Construction Materials L.P., in the making and giving of this Waiver.

Cemex Construction Materials L.P.

Date: _____

By: _____
(Signed name)

(Printed or typed name)

Position: _____